No. 20436

In the
United States Court of Appeal
For the Ninth Circuit

D. J. MILLER,
Appellant,

vs.

COUNTY OF LOS ANGELES, a political subdivision of the State of California,
Appellee.

Appellee's Brief

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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TOPICAL INDEX

TABLE OF CASES AND AUTHORITIES CITED

Cases

Authorities

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STATEMENT OF THE CASE

On December 31, 1963, appellant filed his Complaint in the Court below designated "Complaint for Declaratory Relief and to Impress Constructive Trust on Real Property for Damages and for Unjust Enrichment" (Cl. Tr. 2-9) and on January 27, 1964, appellant filed his First Amended Complaint (Cl. Tr. 12-20). Although denominated a Complaint for Declaratory Relief and praying for a declaration that he is the owner of certain real property therein described, appellant alleges that appellee acquired record title to said real property through allegedly surreptitious tax sale proceedings and further, that the real property had

been deeded to the State of California on July 1, 1959, and deeded to appellee on October 9, 1960 (Cl. Tr. 15). It is, therefore, apparent that, in effect, appellant is attacking the validity of the deeds to the State of California and the deed to appellee County of Los Angeles.

On February 4, 1964, appellee filed a Notice of Motion and Motion to Dismiss (Cl. Tr. 21), which motion was granted by the Court below on April 20, 1964 (Cl. Tr. 49). Thereafter, appellant appealed and this Court reversed the Judgment of Dismissal on the sole ground that the Court below had jurisdiction under 28 USC Section 1331 and that the District Court erred in dismissing the cause on the theory that said District Court lacked any jurisdiction (*Miller v. County of Los Angeles,* No. 19424, February 27, 1965, 341 Fed 2d 964).

On remand, appellee moved for summary judgment (Cl. Tr. 61) on the grounds that appellant's cause of action is barred by the provisions of sections 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California. In support of said motion, appellee filed an affidavit by Leland E. Skinner, head clerk of the Tax Deeded Lands Section of the Office of the Tax Collector of Los Angeles County, who averred *inter alia* that the taxes levied against the property subject of this action became delinquent in 1953; that the property was sold to the State of California by oper-

ation of law pursuant to Section 3436 of the Revenue and Taxation Code on June 30, 1954; that on July 1, 1959, the said property was deeded to the State of California pursuant to Section 3511 of the Revenue and Taxation Code and that on October 19, 1960, the property was deeded to appellee County of Los Angeles (Cl. Tr. 70-72). Attached to said affidavit as Exhibits A, B and C were certified copies of the deeds from the Tax Collector to the State and the deed to appellee County (Cl. Tr. 73-75).

Affiant Skinner further averred that prior to the sale to the State by operation of law and prior to the deeding of the property to the State and prior to the deeding of the property to appellee, examination was made of the tax rolls beginning with the year of delinquency to and including the last equalized roll to ascertain the address of the last assessee and that no address appeared on said roll (Cl. Tr. 72). Affiant also averred that notice of the sale and deeding of the property was published as is required by the Revenue and Taxation Code.

Also, affiant Skinner averred that he had examined the records in the Assessor's Office of Los Angeles County and that said examination disclosed that no property statement as is required by Sections 441 through 447 of the Revenue and Taxation Code was filed by appellant between 1952 and 1960 and as a consequence, no address for appellant appeared on the tax rolls for said years (Cl. Tr. 72).

In opposition to appellee's Motion for Summary Judgment, appellant filed points and authorities and an affidavit *which in no way controverted the facts set forth in the affidavit of affiant Skinner* (Cl. Tr. 94-114). Appellant's affidavit, at most, alleged that appellant commenced a redemption payment plan in *1951* wherein the first payment (and it would appear the only payment) was made on November 13, 1951 (see Exhibits A and A1, Cl. Tr. 110-111); that receipt for the first payment was mailed to appellant in December, 1951 (Exhibit B, Cl. Tr. 112); that other mail from an unknown person had been forwarded to appellant (Exhibit B1, Cl. Tr. 113) and that on January 10, 1962, in response to a letter from appellant apparently dated December 16, 1961, he was advised by the Tax Collector that the property had been deeded to appellee on October 19, 1960 (Exhibit C, Cl. Tr. 114)

On July 12, 1965, the lower court granted appellee's Motion for Summary Judgment (Cl. Tr. 124) and Findings of Fact and Conclusions of Law and Judgment in favor of appellee County of Los Angeles were filed and entered on July 12, 1965, and July 13, 1965 (Cl. Tr. 116-121). Appellant's Motion for New Trial or Rehearing was denied August 16, 1965 (Cl. Tr. 149) and on September 3, 1965, appellant filed his Notice of Appeal (Cl. Tr. 150).

ISSUE ON APPEAL

The sole issue on appeal is whether appellant's cause of action is barred by Sections 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California.

SUMMARY OF ARGUMENT

Sections 175, 3521 and 3809 of the Revenue and Taxation Code provide a one-year statute of limitations within which to attack the validity of tax deeds issued to the State of California or to a political subdivision thereof as a means of enforcing *ad valorem* property tax delinquencies. The deeds here in issue were executed on July 1, 1959 (State), and October 19, 1960 (County). Appellant did not file the present action until December 31, 1963, some four years and five months subsequent to the deeding of the property to the State of California and three years and two months subsequent to the deeding of the property to appellee County and, therefore, his cause of action is barred by the aforementioned sections.

Appellant cannot claim as error a lack of notice by mail since this error, if in fact it be one, was caused solely by the neglect of appellant. Appellant failed and neglected to file with the Assessor of Los Angeles County a property statement as is required by Sections 441 through 447 of the Revenue and Taxation Code and as a result, no address appeared on the tax rolls. Since

no address appeared on the rolls, no notice by mail could be sent appellant. Appellant seeks to hold appellee liable for a problem created solely by appellant's neglect.

I.

SUMMARY JUDGMENT WAS PROPER IN THE INSTANT ACTION

The purpose of summary judgment is to achieve a quick resolution of a dispute when there is no necessity for a trial on the facts. As was stated in *Albatross Shipping Corp. v. Stewart* (CA 5 1964) 326 Fed 2d 208, at 211:

> ". . . The prime purpose of the summary judgment procedure is to secure the just, speedy and inexpensive determination of any action . . ."

FRCP 56(c) provides in pertinent part:

> ". . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law . . ."

Appellee submits no question of fact is presented by the instant action and, therefore, the granting of the motion for summary judgment was proper. Ap-

pellant in no way controverted the affidavit of Mr. Skinner, which was filed in support of appellee's motion. Appellant did not deny that his property was tax delinquent; he did not deny that the deeds were executed on the dates mentioned; and he did not deny that he had failed to file the property statements required by law. Appellee respectfully submits that since no question of fact was presented to the Court below, the said Court was justified in ruling as a matter of law that appellant's cause of action is barred by Sections 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California.

II.

CALIFORNIA STATUTORY MODE FOR THE ENFORCEMENT OF DELINQUENT TAX LIENS.

Although perhaps redundant, appellee feels that a brief resumé of the applicable California law respecting tax delinquencies is appropriate to set the proper frame of reference herein.

California provides a complete and exhaustive statutory mode for the enforcement of and the collection of delinquent ad valorem property taxes. Every tax on real property is a lien against the real property assessed (Revenue and Taxation Code Sec. 2187)* which attaches annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied (Sec. 2192). The first half of the taxes are due November 1 and become delinquent December 10 (Secs. 2605 and 2617), and the second half of the taxes levied are due February 1 and become delinquent April 10 (Secs. 2606 and 2618). After the second half of taxes on real property is delinquent, the Tax Collector is required to prepare a delinquent roll (Sec. 2624) and thereafter publish same (Sec. 3351), together with a notice that unless the total amount due is paid, the time and place at which the property will be sold to the State by operation of law (Sec. 3352). Not less than 21 nor more than 28 days after the publication of

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*All references hereafter are to the Revenue and Taxation Code unless otherwise stated.

the delinquent list, the real property on which the taxes have not been paid is sold by operation of law to the State of California (Sec. 3436).

Five years after the property is sold to the State, the Tax Collector is required to execute a deed conveying the property to the State (Sec. 3511). Prior to such deeding, the Tax Collector is required to publish notice thereof (Secs. 3354 and 3355) and to forward a notice thereof by registered mail to the last known assessee. To ascertain the address, the Tax Collector is required to examine the assessment of the property on the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3358).

Every person is required to file a written property statement under oath with the Assessor between noon on the first Monday in March and 5:00 p.m. on the last Monday in May annually (Sec. 441), seting forth all taxable property owned, claimed, possessed, controlled or managed by that person (Sec. 442). The property statement required by the Assessor shows the person's name, place of residence or place of business, and whether he is the owner of any taxable property (Sec. 543).

Subsequent to the deed to the State, the real property is either sold at public auction (Secs. 3691 - 3731) or by agreement conveyed to a county, city or other public agency (Secs. 3771 - 3814). The latter procedure was followed in the instant action.

Whenever land has been deeded to the State, a county may purchase the property by agreement (Secs. 3791.3 and 3775). The County Tax Collector is required to give notice of this agreement by publication and is required to mail a notice thereof by registered mail to the last known assessee (Secs. 3798 and 3799). To ascertain the address of the last known assessee, the Collector is required to examine the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3799). Thereafter, the Tax Collector executes a deed of the property to the County which, except as against actual fraud, is conclusive evidence of compliance with requirements of the Code (Secs. 3804 and 3806).

The Revenue and Taxation Code further provides a one-year statute of limitations within which to attack the validity of the deed to the State (Secs. 175 and 3521), as well as a similar period to attack the validity of the deed from the State to the County (Secs. 175 and 3809).

III.

APPELLANT'S CAUSE OF ACTION IS BARRED BY SECTIONS 175, 3521 AND 3909 OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

A. Sections 175, 3521 and 3809 Are Statutes of Limitation.

Section 175 of the Revenue and Taxation Code of the State of California provides:

> "Sec. 175. All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Sections 3618 to 3636 of this code."

Section 3521 provides:

> "Sec. 3521. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the

deed can only be commenced within one year after the date of recording of the deed to the State in the county recorder's office or within one year after June 1, 1941, whichever is later.

"Sections 351 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section."

Section 3809 provides:

"Sec. 3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument."

In construing Section 175 the Supreme Court of this state in *McCaslin v. Hamblen,* 37 Cal. 2d 196; 231 Pac. 2d 1, stated at page 198:

"It may not be questioned that the section is a Statute of Limitations as distinguished from a curative act, and that the time factor is reasonable so as to bar these actions commenced almost two years after the effective date (citing cases), unless it may be said that the plaintiffs were owners in possession as against whom the statute would not apply."

In Sears v. County of Calaveras, 45 Cal. 2d 518; 289 Pac. 2d 336, the plaintiff brought an action in 1948 to declare invalid a tax deed issued in 1943. Defendants

demurred on the ground that plaintiff's action was barred by the limitations contained in Sections 175 and 3521 of the Revenue and Taxation Code. Plaintiff contended that those sections do not apply to an owner in exclusive and undisputed possession. In rejecting this argument the Court stated at page 521:

> "The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxes, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title. It may be assumed that such is the general rule (citing cases).
>
> "But the general rule does not apply as against a special statute of limitation foreclosing the commencement of an action to set aside a deed to the state for delinquent taxes beyond one year from and after the recording of the deed to the state."

The Court further stated at page 520:

> "Both of these sections are statutes of limitation (citing cases)."

In *Davault v. Essig,* 80 Cal. App. 2d 970; 183 Pac. 2d 38; Cert. denied 68 Supreme Court 660; 333 U.S. 843; 92 L. Ed. 112 the Court stated at pages 972 and 973:

"The appellants argue that Section 3521 does not apply in such a case as this where the attack is made on jurisdictional or constitutional grounds raising the point that original proceedings which led to the sale to the State were entirely invalid. This contention is without merit since Section 3521 is not a curative act but is a Statute of Limitation and repose, providing a reasonable period of limitation (citing cases). The principles applied in *Mercury-Herald Co. v. Moore,* 22 Cal. 2d 269 (138 Pac. 2d 673; 147 A.L.R. 1111) are applicable here. If the shortening of the period of redemption, where a reasonable time is allowed in which to act, is not violative of constitutional rights it would seem to be even more clear under principles which are frequently applied that a right exists to fix some reasonable limitation upon the time within which a constitutional right may be exercised, by which a limitation is placed on the time within which an action may be commenced to attack the validity of a deed to the State, which deed is given after the five-year period of absolute right of redemption has expired."

In *Federated Income Properties, Inc., v. State of California,* 82 Cal. App. 2d 893; 187 Pac. 2d 460, property had been sold to the State of California for nonpayment of taxes. After acquiring title, the State sold the property to the City of South Pasadena pursuant to an agreement authorized by Chapter 8 of Part 6 of Division 1 of the Revenue and Taxation Code (Sec-

tions 3791 et seq.). Plaintiff two years later brought an action to quiet title to the property and the City of South Pasadena, among other defenses, claimed that the action was barred by Section 3809 of the Revenue and Taxation Code. In affirming the judgment for the defendant, the Court stated at page 901:

> "3. *The Statute of Limitations.* Since the sale to the City of South Pasadena was valid and since this action was not commenced within one year after the execution of the deed from the State to the City, it is barred by Section 3809 of the Revenue and Taxation Code."

Other cases holding Sections 175, 3521, and 3809 to be Statutes of Limitation are: *People v. Chambers,* 37 Cal. 2d 552; 233 Pac. 557; *Edwards v. City of Santa Paula,* 138 Cal. App. 2d 375; 292 Pac. 2d 31; and *Tannhauser v. Adams,* 31 Cal. 2d 169; 187 Pac. 2d 176.

Statutes and code sections should be given a reasonable interpretation according to the apparent or evident intention of the legislature (*Dickey v. Raisin Proration Zone,* 24 Cal. 2d 796; 151 Pac. 2d 505; *Alameda Co. v. Kuchel,* 32 Cal. 2d 193; 195 Pac. 2d 17) and it seems quite apparent from a study of Revenue and Taxation Code that the legislature intended some finality to tax deeds and the proceedings leading up thereto (see Sections 175, 176, 177, 3521, 3522, 3711, 3809 and 3810). As was stated in *Sears v. Calaveras, supra,* 45 Cal. 2d 518 at page 521, "If the contention

of the plaintiffs should prevail, the finality of tax proceedings will be thrown into confusion. The validity of tax deeds as against an owner of real property would be placed in suspension for an indefinite period and until at his election he chose to attack it. Without limit of time he could defend against it."

In Howard v. State of California (1963), 216 Cal. App. 2d 281; 30 Cal. Rptr. 708 (Hearing denied by California Supreme Court), a case identical with the one at bar, plaintiffs brought an action to quiet title to certain real property which had been deeded to the County pursuant to Revenue and Taxation Code Sections 3791 et seq. Plaintiffs contended therein that failure to send notices by registered mail voided the tax proceedings and subsequent tax deeds. The Court rejected this argument stating at page 285:

> "If timely objection had been made to any purported irregularity in the tax proceeding leading to the county's eventual tax title the court might have entertained such objection, but continued dereliction by plaintiffs has inexplorably foreclosed them from relief. There must be a finality to tax enforcement procedures. There is in tax cases, the unquestioned tax debt to justify the taking and in addition, the taxpayer is permitted at least six years within which to redeem or attack any supposed irregularity in the tax proceedings. Such period is a most reasonable allowance for the cure of the laxity of tax delinquency."

B. Appellant's Action was not Timely Filed.

1. Appellant is barred from contesting the validity of the deeds from the Tax Collector to the State.

The affidavit of Leland E. Skinner filed in conjunction with appellee's Motion for Summary Judgment set forth the following facts with respect to the real property here involved:

1.	Taxes Levied for Year	1953
2.	Taxes Paid	No
3.	Sold to the State	June 30, 1954
4.	Deeds to State	July 1, 1959
5.	Deeds Recorded	July 30, 1959
6.	Deed to County	October 19, 1960
7.	Deed Recorded	November 21, 1960.

Appellant had up and until August 1, 1960, to contest the validity of the deeds to the State or the proceedings leading up to said deeds (Sec. 3521).* Appellant did not file his action until December 31, 1963, some three years and five months *after* the expiration of the statutory period and, therefore, any action contesting the validity of said deeds is barred.

2. Appellant is barred from contesting the validity to appellee County.

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*Section 175 provides a one-year statute of limitations from the date of *execution* of the deed, while Section 3521 provides a one-year statute of limitations from the date of *recording* said deed.

Appellant had until October 20, 1961, to contest the validity of appellee's deed. Appellant did not file his action until more than two years and one month after the expiration of this period and, therefore, his action with respect to this deed is also barred.

IV.

APPELLEE IS NOT ESTOPPED FROM ASSERTING THE BAR OF THE STATUTE OF LIMITATIONS.

Appellant cites *Ellgass v. Brotherhood of Trainmen* (CA 9 1965), 342 Fed. 2d 1, and *Tyra v. Board of Police Commissioners,* 32 Cal. 2d 666; 197 Pac. 2d 710, for the proposition that the "Modern view is to look at the statute of limitations equitably" (AOB 6-10). These cases can be of no help to appellant. Both *Ellgass and Tyra* involved contractual obligations between the parties wherein the defendants had *affirmatively* misrepresented to plaintiff that his rights under certain pension programs had expired. In reliance upon these representations, plaintiffs failed to bring their actions within the statutory period. This court and the California Supreme Court applied the well-known doctrine of equitable estoppel and held that defendants were estopped from relying on the statute of limitations because of their affirmative conduct.

No such circumstances exist in the instant case since appellee took no affirmative action upon which appellant relied to his detriment. Apparently, it is appel-

lant's position that a letter written January 10, 1962 (Exhibit C Cl. Tr. 114) in response to an inquiry by appellant dated December 19, 1961, affirmatively misrepresented the facts to him and caused him to delay filing his action. Appellee would point out that the only misinformation contained in that letter is the legal description contained therein. It should also be noted that at the time of appellant's inquiry on December 19, 1961, the statutory period within which he could contest the validity of the deed to appellee had already expired. Inconceivably, appellant now argues that information given him after the statutory period had expired misled him.

The only other averments upon which appellant apparently relies are those found in the affidavit filed by appellant in support of his Motion for Judgment on the Pleadings (Cl. Tr. 94 and 95) wherein appellant states that he was "aware that defendant held a public auction of such tax delinquent property *only* in the first few months of each year at which time in the years 1960 and 1961 affiant telephoned the officers of defendant and was informed that said real property was not to be sold in said sales and was assured that he could redeem the property prior to any such sale at public auction."

FRCP 56 (e) provides in pertinent part:

> ". . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response

> by affidavit or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial.* If he does not so respond, summary judgment, if appropriate, shall be entered against him." (Emphasis added)

Concededly, the affidavit of the party opposing summary judgment is to be liberally contrued (*Poller v. Columbia Broadcasting System,* 368 U.S. 464, 473; 7 L. Ed. 2d 458; 82 Sup. Ct. 486) and yet, even under the most liberal construction, appellant's affidavit fails to set forth facts showing a genuine issue for trial. At most, appellant's affidavit shows that in 1960 and 1961, someone informed him that his property was not among those listed for sale at public auction pursuant to Sections 3691 through 3731 and that should it be put up for sale, appellant had the legal right to redeem the property prior to such sale. These statements were obviously true for the property was not sold at public auction and Sections 3696.5 and 3706 provide a right of redemption prior to the sale.

The doctrine of estoppel is not favored in the law particularly where it is sought to be asserted against a public agency. Four things must be presented in order to invoke the doctrine of estoppel: (1) the party to be estopped must know all the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be

ignorant of the facts and (4) he must rely on the former's conduct to his injury (*Skidmore v. County of Solano,* 154 Cal. App. 2d 449, 453).

None of the latter three elements referred to above are presented in the instant action unless it can be said that reliance upon a correct statement of the law will give rise to an estoppel. Even appellant apparently concedes there was no intent to mislead (see FN 2 AOB 10-11, wherein appellant states "Appellant never alleged that appellee deliberately sent this erroneous letter to confuse appellant, only that it shows an inadvertent, but continuing, neglect of its duty and indifference to rights of appellant") and in view of the presumption that all people know the law (*Keystone Drilling Co. v. Superior Court,* 130 Cal. 738, 745, 726, 398; *Carroll Estate,* 138 Cal. App. 2d 363, 365; 291 Pac. 2d 976), he must be charged with knowledge that at any time after the deeding to the State, the property was subject to conveyance to appellee pursuant to Sections 3771 - 3814 of the Revenue and Taxation Code.

Furthermore, appellee submits that public policy requires the application of the statute of limitation in the instant action. Should this Court hold that mere averments that the taxpayer telephoned some unnamed officers of the County who advised the taxpayer that his property was not to be sold in certain years and could be redeemed by him prior to sale, are sufficient to place in issue the validity of tax deeds in an action filed more than three years after their execution, the

validity of all tax deeds heretofore issued would be jeopardized. This result is exactly that which concerned the California Supreme Court in *Sears v. Calaveras, supra,* 45 Cal. 2d 518. There must be some finality to tax enforcement procedures and appellee submits the six-year period within which the taxpayer may redeem or attack the proceedings is a more than reasonable time within which to cure tax delinquencies.

Appellant was advised on January 10, 1962, that his property had been deeded to appellee on October 19, 1960, an did not file the present action until almost two years after acquiring this knowledge. Assuming solely for the purpose of argument that appellee should be estopped from asserting the statute of limitations because appellant was misled to his detriment, he was not so misled subsequent to January 10, 1962, and any misrepresentations, if any there were, were cured as of that date. If appellee should be estopped, it should only be so for a period not to exceed one year subsequent to the time appellant was advised of the disposition of his property; i.e., up and until January 10, 1963. This one-year period would give appellant the same period of time allowed him by Section 3809 to attack the validity of the deed to appellee and yet, appellant slept on his rights until December 31, 1963, almost two years after he was advised by the Tax Collector that his property had been deeded to appellee.

V.

APPELLANT'S FAILURE TO FILE A PROPERTY STATEMENT EXCUSED THE TAX COLLECTOR FROM SENDING HIM NOTICE.

Section 441 of the Revenue and Taxation Code provides:

> "Sec. 451. Every person shall file a written property statement, under oath, with the assessor between noon on the first Monday in March and 5 p.m. on the last Monday in May, annually, and within such time as the assessor may appoint. At any time, as required by the assessor for assessment purposes, every person shall furnish information or records for examination."

Section 442 provides in part:

> "Sec. 442 .The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by:
>
> (a) The person making the statement. . . ."

It is from this property statement that the local tax rolls are prepared and unless such a statement is filed, no address will appear on said rolls. Without such address, no notice of the sale or deeding of property for tax delinquency can be sent by mail to the last assessee. In the instant action, at no time pertinent to inquiry did appellant ever file the required property statement with the Assessor of Los Angeles County and, therefore, no address appears on the tax rolls regarding the last assessee of the property.

Revenue and Taxation Code §3358 provides:

"After the first publication of the notice of the deed to the State of tax-sold property and not less than 21 nor more than 35 days before the date of deeding, when tax-sold property is to be deeded, the tax collector shall send by registered mail to the last assessee of the tax-sold property at his last known address either a copy of the publication or a printed notice of deeding the property to the State. *To ascertain the address of the last assessee of the tax-sold property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.*" (Emphasis added.)

Revenue and Taxation Code §3799 provides:

"The tax collector shall mail a copy of the notice not less than 21 nor more than 28 days prior to the effective date of the agreement, by registered mail to the last assessee of each portion of the property at his last known address.

"*To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.*

"It is not necessary to mail a copy of the notice to any party who files with the tax collector a

written acknowledgment of receipt of a copy of the notice or a waiver of the notice."
(Emphasis added.)

These code sections were fully complied with by the Tax Collector of Los Angeles County. Because appellant did not file a required property statement, no address appeared on the tax rolls and the Tax Collector was unable to send the notice required by mail.

With respect to the notice required by the code, the California Supreme Court has stated:

> "The inquiry of the tax collector in endeavoring to ascertain the post office address of the delinquent property owners need not extend beyond an examination of the assessment roll during the period mentioned. All the tax collector has to do as to mailing notice is to look at the assessment rolls and ascertain to whom the property about to be sold was last assessed, and whether the address of the party appears thereon. If it does, he must mail a notice. If it does not, no mailing of notice is required. He is not bound to look beyond or outside the assessment roll to ascertain the address of a party when the assessment roll does not furnish it . . ." (*Jacoby v. Wolff,* 198 Cal. 667 at 681; 247 Pac. 195)

See also *Scott v. Beck,* 204 Cal. 78; 266 Pac. 951, and *Penaat v. Terwilliger,* 23 Cal. 2d 865; 147 Pac. 2d 552 wherein tax sale proceedings were held valid though no notice was sent to the last assessee. In each

case, the name of the assessee appeared on the rolls, but no address appeared thereon and the court held the tax collector was excused from complying with the sections requiring notice by mail.

The Skinner affidavit filed in support of appellee's Motion for Summary Judgment (Cl. Tr. 70-72) affirmatively shows that prior to any of the actions taken herein, examination was made of the tax rolls commencing with the year of delinquency (1953) to and including the last equalized roll and no address appeared thereon. These facts were not controverted by appellant.

The Tax Collector did all that was required of him under the law. But for appellant's failure to file a property statement, an address would have appeared on the assessment roll and notice of the Tax Collector's actions could have been sent him. Appellee submits appellant cannot now base his claim to the property on a problem created by his own neglect and failure to comply with the law.

VI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW DO NOT CONSTITUTE ERROR IN THE SUMMARY JUDGMENT PROCEDURE.

Appellant argues that adoption by the Court of Findings of Fact and Conclusions of Law was improper. (AOB 16). Concededly, Rule 56(a) of the FRCP, 28 USCA makes this practice unnecessary; however, appellant apparently overlooks local Rule 3(d)(2) of the US District Court for the Southern District of California which expressly requires this procedure. Local Rule 3(d)(2) provides in pertinent part:

> "There shall be served with each motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure proposed findings of fact and conclusions of law and proposed summary judgment."

This procedure has been tacitly approved in *Trowler v. Phillips* (CA 9 1958), 260 Fed. 2d 924, wherein the court stated at page 926:

> ". . . We have seen findings of fact accompanying summary judgments, Rule 56(a) of the FRCP, 28 USCA, which, while unnecessary, did provide a handy summary . . ."

The Findings of Fact and Conclusions of Law herein do just as was indicated in the *Trowler* case, *supra;* i.e., they provide a handy summary of the facts upon which the summary judgment was based.

CONCLUSION

It is respectfully requested that this Honorable Court affirm the summary judgment of the Court below. Appellant's cause of action, if any he had, has long since been barred by the statute of limitations and his failure to file a property statement excused the Tax Collector from sending him notice by mail of the sale and deeding of his property for tax delinquency.

Respectfully submitted,

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and

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Deputy County Counsel

Attorneys for Appellee

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and in my opinion, the foregoing brief is in full compliance with those rules.

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IRVIN TAPLIN, JR.
Attorney for Appellee